

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE ROSALIO MENDEZ, individually and
on behalf of others similarly situated,

Plaintiff,

v.

303 RESTAURANT LLC; HOVORKA
HOSPITALITIES PIERMONT LLC, d/b/a/ The
Whiskey Kitchen; and HENRY HOVORKA,
Defendants.

| |
|----------------------------|
| USDC SDNY |
| DOCUMENT |
| ELECTRONICALLY FILED |
| DOC #: |
| DATE FILED: <u>10/8/20</u> |

PARTIAL
ORDER OF DISMISSAL

20 CV 3103 (VB)

Plaintiff commenced this action on April 17, 2020, (Doc. #1), and on May 6, 2020, a summons was issued as to defendant Henry Hovorka (“Hovorka”) (Doc. #10).

On May 27, 2020, plaintiff filed an affidavit of service stating Hovorka was served on May 1, 2020. (Doc. #14). This affidavit was signed and sworn to on May 5, 2020. Both of these dates are prior to the issuance of the summons on May 6, 2020. Thus, Defendant Hovorka was not properly served.

Accordingly, pursuant to Fed. R. Civ. P. 41(m), plaintiff's claims against defendant Hovorka are DISMISSED WITHOUT PREJUDICE.

Dated: October 8, 2020
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge